

1D18-3529

**IN THE DISTRICT COURT OF APPEAL
FOR THE FIRST DISTRICT, STATE OF FLORIDA**

KEN DETZNER, in his official capacity as Secretary of State
for the State of Florida,

Defendant-Appellant,

v.

LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., PATRICIA BRIGHAM,
individually, and as President of the League of Women Voters of Florida, Inc., and
SHAWN BARTLET, individually, and as Second Vice President of the League of
Women Voters of Florida, Inc.,

Plaintiffs-Appellees.

**JOINT SUGGESTION FOR PASS-THROUGH CERTIFICATION AND
JOINT REQUEST FOR EXPEDITED TREATMENT**

SECOND JUDICIAL CIRCUIT CASE No. 2018-CA-1523

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The parties to this appeal jointly submit this suggestion for certification pursuant to Rule 9.125 of the Florida Rules of Appellate Procedure and request expedited consideration in light of upcoming election deadlines.

BACKGROUND

This case presents a challenge to the ballot language of Revision 8, a proposed revision to Florida's Constitution submitted to the Secretary of State by the Constitution Revision Commission. Accompanying the proposed revision was the Commission-approved ballot title and summary that, under section 101.161(1), Florida Statutes, would appear on the November 2018 ballot.

Desiring to obtain a final resolution by the Florida Supreme Court before election officials must finalize the ballot—and desiring to avoid the prospect of that Court having to adjudicate this matter after ballots have been printed or cast—the parties below jointly requested priority status, detailing the relevant deadlines for the November election. In view of those looming deadlines, the trial court granted the case priority status, entertained expedited briefing on cross-motions for summary judgment, held a final hearing on August 17, 2018, and issued its final order on August 20, 2018. Defendant then appealed on August 20, 2018.

There is no statutory deadline for finalizing and printing ballots. However, Section 101.62(4)(a), Florida Statutes, requires Supervisors of Elections to mail absentee ballots to absent uniformed services and overseas voters no less than 45

days before a general election. In 2018, that date is September 22, 2018. To have the ballots ready to mail by that date, they must be finalized and printed in advance. There are only a few companies certified to print these paper ballots in the United States and every other state in the Country is holding elections on November 6, 2018. As a result, supervisors of elections in Florida submit their ballot orders as early as possible to ensure they meet the September 22, 2018 mailing deadline.

Supervisors of Elections cannot finalize the ballots until the Defendant Department of State provides them with the names of candidates nominated to office as required by section 99.121, Florida Statutes, and such results are certified for the election. Following the primary election scheduled for August 28, 2018, these certifications are expected to be filed with the Defendant Department of State by no later than September 4, 2018. *See* §102.112(2), Fla. Stat. Before ballots are finalized, the primary election results must also first be certified by the Elections Canvassing Commission, which certifications are expected to be completed by the 9th day after the primary election: September 6, 2018. *See* §102.111(2), Fla. Stat.

Although these certifications apply only to candidates, and not to constitutional amendments, these September dates are the pivotal dates for removing a constitutional amendment from the ballot because county Supervisors of Elections must await the certified election results from the primary election to finalize ballot layout for the General Election scheduled for November 6, 2018.

The deadlines imposed by law upon State and county election officials require the prompt consideration and resolution of this case.

**THE ISSUE PRESENTED IS OF GREAT PUBLIC IMPORTANCE AND, IN LIGHT OF
UPCOMING ELECTION DEADLINES, REQUIRES IMMEDIATE RESOLUTION
BY THE SUPREME COURT**

It is well-settled that pass-through certification is appropriate only in exceptional circumstances. *See State v. Adkins*, 71 So. 3d 184, 186 n.1 (Fla. 2d DCA 2011) (noting that the “court has invoked the rule only in a handful of very exceptional appeals”); *Fla. Dep’t of Agric. & Cons. Servs. v. Haire*, 832 So. 2d 778, 781 (Fla. 4th DCA 2002) (noting that consideration of pass-through “should be rare”). This case presents one of those circumstances because it involves a ballot challenge where ballots have not yet been printed. *See, e.g., ACLU of Fla., Inc. v. Hood*, 881 So. 2d 664, 666 (Fla. 1st DCA 2004); *Harris v. Coalition to Reduce Class Size*, 824 So. 2d 245, 247 (Fla. 1st DCA 2002). Florida Rule of Judicial Administration 2.215(g) contemplates the time-sensitive nature of ballot challenges such as the one at issue here by directing that “challenges involving elections and proposed constitutional amendments” deserve “particular attention” as a category of priority cases for which there exists a “duty to expedite . . . to the extent reasonably possible.” This Court, moreover, recognized the same by certifying a materially similar case in *Department of State v. Florida Greyhound Association*, No. 1D18-3260 (Fla. 1st DCA), a ballot title/summary challenge that the Florida Supreme

Court has already set for argument on August 29, 2018, *see Dep't of State v. Fla. Greyhounds Assoc.*, No. SC18-1287 (Fla.).

What is more, this case does not involve a run-of-the-mill election issue. Rather, it concerns a challenge to the ballot language for an amendment proposed by the Constitution Revision Commission, which convenes only once every two decades. *See* art. XI, § 2, Fla. Const. This Court and the Supreme Court have recognized that ballot-language challenges to Commission-proposed amendments merit pass-through certification. *See Fla. Dep't of State v. Slough*, 992 So. 2d 142, 146 (Fla. 2008) (resolving, on pass-through certification from this Court, a ballot-language challenge for an amendment proposed by the Taxation and Budget Reform Commission). The same treatment should be afforded to this case.

The parties acknowledge that this Court is perfectly capable of reaching a well-reasoned decision in this appeal. However, because all the parties are committed to seeking further review of any adverse ruling, their legal arguments are fully developed, and only the Supreme Court can offer a final answer to the important and time-sensitive question that this case presents, the parties respectfully suggest certification. The Florida Supreme Court, moreover, is scheduled to conduct oral arguments during the last week of August. Assuming this Court expeditiously grants the parties' joint suggestion for pass-through certification and the Florida Supreme Court accepts review, then expedited briefing and oral argument could

occur in that Court before the early September practical deadline for printing the General Election ballots.

CONCLUSION AND CERTIFICATE

We express a belief, based on a reasoned and studied professional judgment, that this appeal requires immediate resolution by the Supreme Court and is of great public importance. The parties respectfully ask for certification and expedited consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been furnished by e-mail on this 21st day of August, 2018, to the following counsel:

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